

Sentence

NETH-18

IN THE NAME OF THE QUEEN!

2 The Temporary Court-martial in MEDAN has passed the following sentence in the case of the accused:

MIZUO KATSUNO,

aged 25, born in HOTAKA-MACHI, in the department of NAGANO (Japan); electrician; last in military service and serving as corporal in the 25th Japanese Army; now in detention on remand.

The Temporary Court-martial in MEDAN:

In view of the committal order to the Temporary Court-martial in MEDAN dated 17th April 1947, whereby the day of the trial was fixed for 7th May 1947 and in which the accused was charged by the Prosecutor of the Temporary Court-martial:

that he after in August 1946 or thereabouts having deserted from the Japanese army in which he was a corporal and gone to TANDJOENG SLAMAT (east coast of SUMATRA) during the time which followed this desertion until his arrest on 2nd January 1947, therefore in time of war, being a Japanese and so a subject of an enemy power, was guilty of a war crime in that, contrary to the terms of the armistice concluded by Japan he committed hostilities at the PADANG BOELAN Estate near MEDAN, namely, by joining the Indonesian armed organisation LASKAR RAKJAT which was carrying on an armed opposition to the lawful Government of the Netherlands East Indies, and instructing the members of this organisation in the building of fortifications, which acts constitute a violation of the laws or customs of war;

In view of the summons and writ dated 17th April 1947 from which is apparent that the accused tempore utili is called upon to appear at the sitting of the Court-martial on 7th May 1947;

In view of the demand read out by the Prosecutor and then handed to the Court-martial, to the effect that the Court-martial declare the accused guilty of the war crime: "Commission, contrary to the terms of an armistice, of hostile acts", and sentence him on that account to FIFTEEN years' imprisonment;

In view of the documents in the case, in so far as these were read out to and shown the accused;

In view of what has been advanced by the accused in his defence;
In view of counsel's speech on his behalf;

Considering that the accused has been charged with a war crime so that in virtue of article 3, sub section 4, of the "Provisions concerning the Legal Competence of the Military Judge" as these read pursuant to the "Legal Competence in respect to War Crimes Decree", the military judge and, in virtue of article 11, sub-section 3 of the above "Provisions", the Temporary Court-martial in MEDAN are competent to deal with this act;

Considering that the accused has admitted to being a Japanese subject but has otherwise denied the acts charged, stating,

that he deserted, unarmed, from the Japanese army in October 1946 and went to a hostel in BRASTAGI belonging to a military organisation

-which-

which was carrying on hostilities against the Royal Netherlands East Indies army;

that shortly after this, near the PADANG BOELAN Estate just outside MEDAN, he joined an organisation called LASKAR RAKJAT, but that the unit to which he belonged did not commit any hostilities and he devoted himself to agriculture, but that he had it is true bought a Japanese sword;

that on the day of his arrest all the inhabitants had fled because Netherlands East Indies troops had started an action, so that he was the only one remaining behind;

that he had not given any instruction in the building of fortifications but had only approved of these as constructed by others and,

that at the moment of his arrest he was intending to go and buy revolvers;

Considering that according to the Statement of his interrogation in the preliminary investigation undertaken by the Deputy Prosecutor of the Temporary Court-martial in MEDAN, Dr. W. BEUN, dated 23rd January 1947, which statement has been read out at the sitting, the accused admitted having taught soldiers belonging to the LASKAR RAKJAT how to construct fortifications;

Considering that the accused has denied having made these statement at the preliminary investigation, but that the Court considers them proved by the statement containing them, which was made out and then signed by the accused after it had been read out to him in his own language;

Considering that in the opinion of the Court it is not necessary that the witnesses named below should appear at the sitting;

Considering that according to the statement of his interrogation by JAN van LOHUIZEN dated 28th January 1947, undertaken following an order from the Prosecutor of the Temporary Court-martial in MEDAN, witness MOTOJI IKEJIMA, stated on oath that the accused deserted unarmed from the Japanese army in October 1946;

Considering that, according to the statement of his interrogation by the Deputy Prosecutor of the Temporary Court-martial in MEDAN, Dr. W. BEUN, made out and dated 23rd January 1947, witness AUGUST OTTO HERRNSDORF stated on oath that when arrested accused declared that he had thrown his weapons into the river, and that from the papers which were on his person it appeared that he belonged to an armed native organisation;

Considering that it is a matter of general knowledge that an armistice was concluded in 1945 between the Allied and Japanese armies in accordance with which all hostilities by the Japanese army had to be stopped, which is further confirmed by the copy of the agreement concluded at SINGAPORE on 12th September 1945 between the Supreme Allied Commander South East Asia and the authorised representative of the Supreme Commander Japanese Expeditionary Forces, Southern Regions, which has been read out at the sitting;

Considering that the charge is fully proved by accused's extrajudicial admission seeing that in the opinion of the Court the special circumstances in which the act was committed form an obstacle to the production of further evidence to do which would result in an inadmissible delay in the termination of the case;

Considering that this admission has moreover been very largely confirmed by the statements made by the accused at the sitting and by those of the aforesaid witnesses, so that legal and -convincing-

convincing evidence of that charged and accused's guilt of same has been constituted;

5 Considering that helping, in contravention of the terms of an armistice, with the construction of fortifications and joining an organisation fighting the lawful Netherlands East Indies government, thereby committing hostilities, is named by the legislator in article 1, sub-section 39, of the "Definition of War Crimes Decree" as an example of acts which constitute a violation of the laws or customs of war, so that it is not necessary to go separately into which laws or customs of war have been violated;

6 Considering that the war which broke out in 1941 between the Kingdom of the Netherlands and the Japanese Empire is not yet at an end, so that that which has been charged was committed in time of war by a subject of an enemy thereby constituting a war crime;

Considering that accused it is true is being prosecuted in the matter of a war crime committed in the years 1946 and 1947 and that the penal provisions of art. 4 of the "War Crimes Penal Law Decree" were only laid down in Statute Book 1946 No. 45, but that Part 1, therefore also art. 1, of the first book of the Penal Code is made non-applicable with relation to war crimes so that the acts proved are punishable, and in so far as they already were punishable can be punished with those penalties mentioned in art. 4 of the "War Crimes Penal Law Decree";

7 Considering with regard to the degree of punishment that the continuation of hostilities after an armistice has been concluded between the belligerents is so contrary to good faith and so hinders the restoration of normal conditions that a sharp punishment is rightly called for, but that the strengthening of the armed bands roaming the interior by adding to them a specialist trained soldier has particularly serious consequences in the circumstances reigning at the present time so that a very heavy sentence ought to be imposed;

Considering that the accused must be kept in custody for fear of his escaping;

In view, in addition to the legal provisions quoted above, of arts 1 and 4 of the "War Crimes Penal Law Decree", art. 1, sub-section 39, of the "Definition of War Crimes Decree", arts 63, 73 and 74 of the "War Crimes Legal Procedure Decree", art 22 of the "Legal Procedure in the SUMATRA Region" and Section 3, Part 10 of the "Revised Native Regulations";

Administering the Law;

Declares the charge legally and convincingly proved;
Declares the accused guilty of same;

3 Declares the accused therefore guilty of the war crime:
"Commission of hostilities contrary to the terms of an armistice";
Sentences the accused on that account to EIGHTEEN years imprisonment;

Orders that the accused be kept in custody.

Judgment passed on 7th May 1947 by:

Lt. Col. Dr. J.M.F. ESKENS
Capt. F.E. PERDIJK RUGEBREGT)
1st. Lt. E. ZONDAG)

President
Substitute
Members

-in the-

in the presence of:

2nd Lt. Dr. F. HOOGSTRATE

Secretary,

and summed up and decreed on 28th May 1947.

Noted by me:
the Secretary,
s/F. Hoogstrate

The President,
s/J.M.F. ESKENS.

The Members,
s/E.F. PERDIJK RUGEBRECHT
E. ZONDAG.

Fiat of execution of the above sentence has been granted this day, 28th May 1947, by me, J. GERRITSEN, head of the Temporary Administration in MEDAN, in virtue of art. 11, par 2 of Ordinance No. 12 of the Chief Commanding Officer Allied Military Administration Civil Affairs Branch for Sumatra in conjunction with Decree No. 10, sub-section (b) (S.1946-130), issued by the Lieutenant-Governor-General of the Netherlands East Indies a(d) dated 29th November 1946.

The Commanding Officer,
s/J. GERRITSEN
(Dr. J. GERRITSEN).

Head of the Temporary Administration,
the above.

The above sentence was publicly pronounced at the sitting of the Temporary Court-martial in MEDAN on 28th May 1947 by Lt. Col. Dr. J.M.F. ESKENS, president, in the presence of Capt. F.E. PERDIJK RUGEBRECHT and 1st Lt. E. ZONDAG, deputy members, 2nd Lt. Dr. F. HOOGSTRATE, secretary and Dr. W. BEUN, deputy prosecutor, in the presence of the accused and his counsel.

Noted by me,
the Secretary
s/F. HOOGSTRATE.

The President,
s/ J.M.F. ESKENS.

Note to JUDGMENT, "Mizuo KATSUNO".

In view of the various Decrees etc., quoted in the findings in this case the Ministry for Overseas Territories was approached with the request to supply for consultation copies of the

- a. "Legal Procedure in the Sumatra Region";
- b. "Revised Native Regulations";
- c. "Lt-~~GOVERNOR~~ Governor-General of the Netherlands East Indies' Decree No. 10 of 29 November 1946";
- d. "Decree No. 12 of the Chief Commanding Officer Allied Military Administration Civil Affairs Branch for Sumatra".

The Ministry possesses no copy of (a) or (d), but kindly allowed the other two to be seen. A short summary of the relevant parts of the latter is given below.

"Revised Native Regulations":

art. 292.

The District Court trying the case must, after the examination in court has ended, consult advisers appointed by the N.E.I. Govt. as to the accused's penal liability, taking into consideration his religious laws, institutions and customs. The members of the Court shall then proceed to discuss the crime and its punishment.

art. 293.

Evidence must be weighed by the Court in accordance with the prescriptions laid down in this connection.

art. 294.

Sentence can only be passed if the judge is convinced by the legal evidence produced that the act took place and the accused was guilty of same.

arts 294 and following.

On what constitutes legal and acceptable evidence. This appears to follow that usually accepted in Netherlands courts-of-law.
General procedure.

"Lieut. Governor-General of the Netherlands East Indies' Decree No. 10 of 29 November 1946", under (b) (S. 1946-130).

As the Allied Army of Occupation was leaving Java and Sumatra on 30-11-46 the above Decree set up a temporary civil organisation under the name "Tijdelijk Bestuursdienst (T.B.)", (Temporary Civil Administration), for the Rionw Archipelago, which organisation was to take over the duties and personnel of the Allied Military Administration Civil Affairs Branch (AMACAB).

In virtue of this decree the Commanding Officer in Batavia also had the additional function of Head of the T.B.

The C.C.O., AMACAB Decree No. 12 is most probably the Allied Army of Occupation's counterpart of the above.
